

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

ELBERT SMITH,	)	
	)	
Plaintiff,	)	Civil Action No. 7:21cv00457
	)	
v.	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
SERGEANT MICHAEL PAULEY, <i>et al.</i> ,	)	By: Hon. Thomas T. Cullen
	)	United States District Judge
Defendants.	)	

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Plaintiff Elbert Smith, a Virginia inmate proceeding *pro se*, filed this civil action under 42 U.S.C. § 1983. On April 6, 2022, the defendants filed a motion to dismiss Smith’s complaint; on April 7, 2022, the court issued the notice required by *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 2005). (*See* ECF Nos. 17 and 19.) The *Roseboro* notice advised Smith that he had 21 days to file a response to the motion to dismiss and that, if he did not respond to the defendants’ motion to dismiss, the court would “assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant[s] state[] in their responsive pleading(s).” (*See* ECF No. 19.) The notice further advised Smith that, if he wished to continue with the case, it was “necessary that Plaintiff respond in an appropriate fashion,” and that if he failed to file some response within the time allotted, the court “may dismiss the case for failure to prosecute.” (*Id.*) Smith did not respond. Therefore, the court will dismiss Smith’s complaint without prejudice for failure to prosecute.

The clerk is directed to forward copies of this Memorandum Opinion and Order to the parties.

**ENTERED** this 5th day of May, 2022.

/s/ Thomas T. Cullen  
HON. THOMAS T. CULLEN  
UNITED STATES DISTRICT JUDGE